



DEPARTMENT OF THE NAVY

OFFICE OF THE SECRETARY

1000 NAVY PENTAGON

WASHINGTON, D.C. 20350-1000

SECNAVINST 5740.25D

NAVINSGEN-00

1 August 2000

SECNAV INSTRUCTION 5740.25D

From: Secretary of the Navy  
To: All Ships and Stations

Subj: RELATIONS WITH THE OFFICE OF THE ASSISTANT INSPECTOR  
GENERAL FOR AUDITING (AIG(A)), DEPARTMENT OF DEFENSE (DOD)

Ref: (a) DOD Directive 7600.2 of 2 Feb 91 (NOTAL)  
(b) DOD Directive 5106.1 of 14 Mar 83 (NOTAL)  
(c) DOD Instruction 7050.3 of 24 Apr 00 (NOTAL)

Encl: (1) Administrative Relationships with the AIG(A)  
(2) Preparing and Processing Responses to AIG(A) Reports  
(3) Access to Agency Information

1. Purpose. To provide guidance and direction to Department of the Navy (DON) activities for relations with the AIG(A) under the provisions of references (a) and (b) and to establish responsibilities and procedures for:

- a. Working with AIG(A) when they are conducting audits of DON activities.
- b. Ensuring DON comments on AIG(A) draft or final reports are timely, responsive, and representative of the DON position.
- c. Granting/denying access to DON records and information.

This revision changes organizational designation for AIG(A), DoD audit liaison from the Office of the Assistant Secretary of the Navy (Financial Management and Comptroller) to the Office of the Naval Inspector General (NAVINSGEN). Policy and procedures contained in the body of this instruction remain the same.

2. Cancellation. SECNAVINST 5740.25C.

3. Background. The Department of Defense Inspector General (DoDIG) has the responsibility to conduct, supervise, monitor, and initiate audits and investigations relating to programs and operations of the DoD per Public Law 95-452, Section 4(a), as set forth in reference (b). The AIG(A) is the auditing organization within the office of the DoDIG. The main objective of AIG(A) audits is to identify opportunities to reduce the costs of DoD programs and operations, and to prevent the unnecessary or

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uneconomical expenditure of DoD funds. The AIG(A) utilizes the Naval Audit Service (NAVAUDSVC) and audit organizations in other DoD components when conducting inter-service audits. The AIG(A) coordinates its audit plans with those of the NAVAUDSVC and the General Accounting Office (GAO) to avoid duplication. Audit coverage by the AIG(A) includes:

- a. Internal audits of the Unified Commands and their Military Assistance Advisory Groups and Missions.
- b. Audits of selected aspects of operations involving 2 or more DoD Components (inter-service audits).
- c. Audits of the entire procurement process, including the performance of contractors and DoD contracting officials.
- d. Audits of activities, programs or functions solely within one of the Military Services, if the cognizant Military Service audit activity is unable to provide the audit coverage needed.
- e. Other audits as the DoDIG considers appropriate.

4. Policy. DON policy is to cooperate fully with the AIG(A), to facilitate their audit operations to the maximum practicable extent, and to derive full advantages of the AIG(A) findings and recommendations in the interests of improving the DON. Details are provided in enclosures (1), (2), and (3).

5. Responsibilities

- a. The Naval Inspector General (NAVINSGEN) shall serve as the DON central liaison with the AIG(A).
- b. The Director, Audit and Cost Management Division (NAVINSGEN-4) will act as the central liaison with the staff of AIG(A) and the DON. This includes:
  - (1) Providing guidance and assistance to DON personnel participating in an audit.
  - (2) Distributing correspondence pertinent to announced audits and designating action offices.
  - (3) Distributing each audit report to the designated action offices.

(4) Providing evaluative analyses of audit report findings and recommendations for budget analyses and DON management.

(5) Assigning responsibility to prepare the DON response to audit reports for appropriate Assistant Secretary of the Navy (ASN) signature.

(6) Providing guidance and assistance to action offices in the preparation of responses and administrative procedures pertaining to receipt, assignment, review, evaluation and release of such responses.

(7) Controlling and monitoring progress of the preparation of the response to assure prompt, timely reaction to reports.

c. The DON action office, for purposes of this instruction, is defined as the DON organization assigned cognizance over the subject matter the AIG(A) is auditing. DON action offices include offices of the Secretariat, Chief of Naval Operations (CNO), Commandant of the Marine Corps (CMC), headquarters commands (Commander in Chief, U.S. Atlantic Fleet and Commander in Chief, U.S. Pacific Fleet) and selected commands. DON action offices shall:

(1) Issue instructions to ease the conduct of audits, and ensuring responses to reports are prepared in a timely and responsive manner.

(2) Maintain a central contact point responsible for:

(a) Maintaining liaison with NAVINSGEN-4.

(b) Ensuring the internal distribution of reports.

(c) Assigning internal responsibility for action on reports.

(d) Ensuring compliance with the time schedules for responses established by NAVINSGEN-4 or the designated action office.

(e) Ensuring implementation of the corrective action required on the concurred-in recommendations of an AIG(A) report.

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(f) Considering the applicability of the report findings to functions of the organization not covered by the report.

(g) Ensuring all responsibilities assigned to the action office are carried out.

(h) Obtaining activities legal review, as appropriate, on responses.

(3) Establish the contact point at a level within the organization that will ensure prompt and effective discharge of the responsibilities assigned.

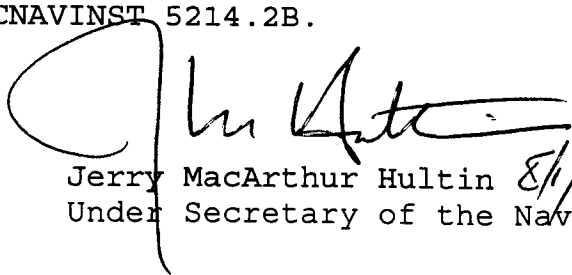
(4) Provide and keep current the name, code, and telephone number of the designated contact point to NAVINSGEN-4.

#### 6. General Procedures

a. When a response to a report referred to the Secretary of the Navy (SECNAV) is required, NAVINSGEN-4 shall request the head of the appropriate DON organization to prepare a written reply on behalf of SECNAV. Other organizations may be requested to provide comments to the organization preparing the reply. Comments should be coordinated through each organization's audit liaison office. A current list of audit liaison offices is available from NAVINSGEN-4.

b. Sufficient priority shall be given to AIG(A) draft and final report responses to meet the due dates. Normally, the AIG(A) requires comments within 60 days of the date of the audit report. Failure to submit comments on the draft report within the assigned 60 days could result in the final report being published and distributed to Congress and others without a DON management position. When the reply must be unavoidably delayed, an interim response addressing as many findings, conclusions, and recommendations as possible shall be forwarded. The interim response shall state when a final response will be made.

7. Reports. The reports required by this instruction are exempt from reports controlled by SECNAVINST 5214.2B.

  
Jerry MacArthur Hultin 8/1/00  
Under Secretary of the Navy

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ADMINISTRATIVE RELATIONSHIPS WITH THE AIG(A)

The following procedures are applicable to all AIG(A) audits.

1. Announcements. AIG(A) auditors are authorized direct access to and communications with DON personnel. The AIG(A) will advise the DON of a planned audit (hereinafter called an assignment) by memorandum addressed to the NAVINSGEN. The announcement describes the nature, scope, objectives, time frame, and locations to be visited, if known. Each announcement will be identified by an assignment (project) number. NAVINSGEN-4 will ensure distribution of the announcement to DON offices having an apparent interest.
2. Notices of Visit and Security Clearances. By separate correspondence, the AIG(A) will advise each location to be visited of the date(s) of visit(s); the names, grades and security clearance of AIG(A) personnel involved; and a copy of the assignment announcement. The AIG(A) will provide advice of visit as far in advance as possible. When feasible, such advice will be provided at least 10 days prior to an intended visit and 30 days in advance for a visit to a ship. The AIG(A) will also provide a copy of the notice of visit and security clearance correspondence to NAVINSGEN-4. The audited activity will allow the auditors to proceed on unclassified matters upon presentation of proper credentials, and in the case of classified matters, upon verification of required security clearance.
3. Entrance Conference. An entrance/opening conference between auditors and pertinent command representatives is strongly recommended. The purpose of this conference is to gain a mutual understanding of the audit background, scope, specific objectives, time frame, locations to be visited, audit methods to be employed and milestones for completion.
4. Action Office. NAVINSGEN-4 will assign an action office, when appropriate, to act as a point of contact in the DON for the particular assignment. Generally, the action office will:
  - a. Ensure the necessary security clearances are validated.
  - b. Arrange for AIG(A) personnel to meet command personnel or visit other offices or installations if necessary to the assignment. The action office should initiate such action via the designated central contact point (see paragraph 8).
  - c. Provide or arrange for briefings.

Enclosure (1)

d. Make temporary working space available or assist in obtaining an acceptable worksite.

e. Arrange for access to records, documents and other data that are properly authorized for release to the AIG(A).

f. Arrange for entry and exit conference between AIG(A) auditors and DON management officials.

g. As a result of AIG(A) auditor visits, prepare a report of substantive issues, findings or conclusions, or a listing of documents provided to AIG(A) auditors that are considered to be of interest to the DON management. Copies should be provided, as applicable, to appropriate command levels.

h. Prepare and coordinate the DON response to an AIG(A) draft or final report, and follow up periodically on AIG(A) recommendations until action is considered complete.

5. Visits to Fleet Headquarters and Subordinate Commands. When the AIG(A) needs to visit fleet headquarters and/or subordinate commands, the designated action office should determine if a subject area briefing should be provided to the AIG(A). This briefing should be provided to ensure the auditors will arrive at fleet activities familiar with the subject matter. When such a briefing is provided to AIG(A) personnel, the action office will advise the fleet commanders in chief by message or correspondence, contingent upon the need for expeditious notification of: (1) planned dates and specific locations to be visited by AIG(A) auditors; (2) substance of briefings provided the auditors by the action office (and other DON offices in Washington, if involved); (3) areas of special interest evidenced by the auditors; and (4) identification of documentation provided to auditors (forward copies of documentation or extracts, as appropriate, to the fleet commanders in chief if not held by them).

6. Visits to Ships, Squadrons, and Fleet Marine Force (FMF) Units. AIG(A) audits may involve visits to ships, squadrons, and FMF units. The fleet commanders in chief and commanders, FMF are authorized to arrange for AIG(A) visits to ship and FMF units in accordance with the provisions of this paragraph. Such authority may be delegated, if considered appropriate. Such visits should be planned, consistent with AIG(A) requirements, not to interfere with normal operations nor with activities contributing to personnel morale and will not be permitted to interfere with essential operations. Visits to ships, squadrons, and FMF units

while in a combat zone, or to ships, squadrons, and FMF units still deployed but temporarily out of the combat zone for purposes of provisioning, minor repairs or rehabilitation, and scheduled for immediate return to a combat zone, will not be authorized without specific approval of the Secretary of the Navy (SECNAV). A report on each AIG(A) visit to a ship, squadron, or FMF unit will be prepared per subparagraph 4g and forwarded to CNO or CMC via the chain of command as appropriate. Questions or problems in connection with these visits will be referred expeditiously to CNO or CMC, as applicable. The AIG(A) work assignment code number must be included on all communications.

7. Exit Conference. AIG(A) auditors will hold an exit conference with management officials to confirm the accuracy of facts compiled during their audit. They may discuss with management their audit findings to ensure there is a mutual understanding of the audit results and obtain management's intentions for solving deficiencies. The exit conference provides an excellent opportunity for managers and auditors to resolve as many disagreements as possible prior to the issuance of an audit report. The objective and constructive exchange of ideas and information during the conference encourages the resolution of issues and differences generated as a result of the audit. It is appropriate for DON management officials to discuss (affirm, refute, or correct) alleged savings or cost avoidances, when applicable. DON comments obtained at an exit conference must be considered as preliminary and unofficial. Official DON comments are provided only after receipt of a draft or final report from AIG(A). Written responses to draft/final reports will be signed out by an authorized management official, generally an ASN.

8. Central Contact Points. Each DON action office will maintain a central contact point who will act as liaison to NAVINSGEN-4. The contact point will be established at a level within the organization that will ensure prompt and effective discharge of the responsibilities. Each action office will provide, and keep current, the name, code and telephone number of the designated central contact point to NAVINSGEN-4.



PREPARING AND PROCESSING RESPONSES TO AIG(A) REPORTS

The following applies to preparing and processing responses to AIG(A) draft and final reports.

1. Background. AIG(A) forwards draft and final reports to NAVINSGEN-4 for appropriate action. The AIG(A), in its transmittal memorandum, will identify the DoD components tasked to provide a response to the report and the due date for such response. NAVINSGEN-4 will assign an action office to prepare and coordinate the response to the report and will ensure distribution of reports to all commands and activities determined to have an interest. An office of the DON is designated as the action office when the report contains matters for which it has principal management responsibility and/or policy cognizance. The other DON offices having an interest in the report are considered to be collateral action offices. Because of time constraints, the collateral action offices must review the report immediately upon receipt and begin preparation of their input without a formal request for comment from the DON-designated action office. Offices receiving copies of AIG(A) reports as information addressees are expected to volunteer input to the action office, whenever considered appropriate, even though not tasked to do so by either the action office or NAVINSGEN-4.

a. Any command or CNO office receiving an AIG(A) report covered by this instruction which does not indicate that the report has been forwarded by NAVINSGEN-4, will notify NAVINSGEN-4 immediately, so arrangements can be made for proper distribution and assignment of action. Any office of the Secretariat receiving an AIG(A) report, or a request for comment on an AIG(A) report from any source other than NAVINSGEN-4, should notify NAVINSGEN-4 promptly to ensure proper compliance with the Secretary of Defense (SECDEF) processing requirements. This particularly applies to requests originated by Office of the Secretary of Defense (OSD) staff offices and transmitted directly to an ASN.

b. NAVINSGEN-4 sets the suspense date required to enable the DON to comply with the 60-day suspense date. The suspense date assigned to the action office is the day the response is due in the NAVINSGEN office. Reports and replies will be given priority handling to the extent necessary to meet the established suspense dates.

2. Action Office Procedures. The office assigned action by NAVINSGEN-4 for preparing a response to a report is responsible for:

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- a. Establishing a time frame for the preparation and review of the proposed DON response, allowing sufficient time for coordination with other interested offices, as necessary. The proposed response with backup data should be provided to the SECNAV mailroom at least 5 working days prior to the response due date.
- b. Determining what input from external offices will be required stating clearly what is wanted and establishing a due date.
- c. Arranging for any meetings desired with AIG(A) personnel, or for access to required AIG(A) working papers.
- d. Preparing the proposed response and obtaining legal review, as necessary.
- e. Coordinating the proposed response throughout the preparation period to ensure the response is not delayed, and a minimum of rewriting is required at the reviewing levels.
- f. Monitoring the response through the coordination process until it is received by the SECNAV mailroom or NAVINSGEN-4. The proposed response may be delivered to NAVINSGEN-4 at least 7 work days prior to the due date.
- g. Assuring that applicable amounts, discussed in a report as a savings or a cost avoidance, are specifically addressed in the DON response. The alleged savings or cost avoidance should be confirmed, refuted, or corrected, as appropriate. Conversely, increased costs which might result from a report finding or recommendation should also be addressed. Amounts that cannot be verified should be promptly resolved with the AIG(A) auditors.
- h. Forwarding requests to NAVINSGEN-4 for extension of OSD-established due dates. Such requests will be kept at a minimum.
- i. Submitting a partial response when a complete response cannot be prepared within the time frame established. This partial response should cover the report findings, and to the extent feasible, provide a tentative position on the report and state when the final response can be expected. A partial response may be submitted prior to the suspense date, but in no event later than the suspense date assigned by NAVINSGEN-4.

3. Preparing the Response. The action officer may prepare the DON response in either a letter form or in the format below. If the letter form is used, the action officer will prepare a briefing paper (or memorandum) to the appropriate ASN and a memorandum addressed to the AIG(A) (or OSD, if designated in the NAVINSGEN-4 tasking) to be signed by the ASN. The memorandum should include a summary of the AIG(A) findings and recommendations applicable to the DON, and the DON position on each. If the format described below is used, the action officer will prepare: (1) a briefing paper to the appropriate ASN; (2) a transmittal letter to the AIG(A) (or OSD, if designated by the NAVINSGEN-4 tasking) to be signed by the ASN, highlighting the most significant aspects of the DON position; and (3) the response, in the format below, as an enclosure to the transmittal letter. This format response should include a caption, a summary of AIG(A) findings and recommendations, and a statement of the DON position as detailed below.

a. Caption. The caption will read as follows:  
Department of the Navy Response  
to  
AIG(A) (draft, final) Report of (date)  
on  
(Title)

b. Summary of AIG(A) findings and recommendations. Briefly summarize each of the AIG(A) findings, conclusions and recommendations to which the DON is responding.

c. Statement of DON position. This section should be devoted to a detailed, comprehensive statement reflecting DON's position and should be fully responsive to each finding, conclusion and recommendation in the report. If the DON is right, say so and prove it; if the DON is wrong, admit it and indicate corrective action taken, planned or proposed with an estimated completion date. If the DON non-concurs with a finding, conclusion or recommendation, the response should set forth the basis for the non-concurrence including the facts supporting such a position.

(1) If the findings in an AIG(A) report are objective and complete, state the report findings are correct. Refute inaccurate statements or unsound conclusions on the basis of fact or logic. Whenever feasible, dollar amounts discussed in a report as a savings or a cost avoidance should be specifically addressed in the DON response. The alleged savings or cost avoidance should be confirmed, refuted, or corrected, as

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appropriate. Conversely, resource increases that might result from a report finding or recommendation should also be addressed. The AIG(A), upon request, will make report working papers, or information in such papers, available to the DON. Therefore, ignorance of facts not in the report, but available from AIG(A), will not be an acceptable reason for lack of responsiveness in the reply. Avoid contentious language and tone, and opinions not supported by fact. Place a critical statement in proper perspective, relating it to the time frame of the reported deficiency and conditions existing at the time. Relate the condition to the magnitude of the functions, citing comparative figures where possible.

(2) Cover, specifically, each recommendation in the report of DON concern, unless individual treatment would be repetitious or impracticable. It is unnecessary to comment on those findings where the report itself indicated corrective action has been taken. Comment should be made on significant or critical findings, conclusions, or statements even though no recommendations are made.

(3) When comments indicate agreements with findings/recommendations include what, and when, corrective action has been initiated or planned, documenting the action taken by citing directive or other correspondence when possible. If specific action to correct a deficiency was taken prior to receipt of the AIG(A) report, so state and describe, if appropriate, document the action. Comments indicating disagreement shall explain fully the reasons for disagreements.

(4) Place NAVINSGEN-4 on the copy to list of the proposed response.

## ACCESS TO AGENCY INFORMATION

### I. Access By Means of Interview

Interview, Audit Point of Contact (POC) Defined: DoDIG and GAO auditors may ask questions of DON personnel in order to obtain information falling within the scope of the audit or research project<sup>1</sup> they are conducting. Questions may be presented orally (informal discussions, structured interviews, etc.) or in writing (questionnaires, surveys, e-mails, etc.). For the purpose of this discussion, any attempt to obtain access to information by asking questions instead of examining agency records is an interview. The person within an organization assigned POC or liaison duties for the audit is referred to below as the Audit POC.

Official Nature of Interviews: Interviews are conducted for, and limited to, the purpose of obtaining information falling within the scope of the audit. Interview questions that do not fall within the scope of the audit are not for an official purpose and no response to them is required or recommended. Persons interviewed shall provide current, accurate, and complete information to the best of their ability and knowledge. They shall qualify their responses when they are uncertain of the currency, accuracy, or completeness of the information in their possession and/or refer them to others. When questions require a determination as to what policy governs an issue, or whether an action or procedure adheres to policy, the Audit POC shall refer the auditor to the organization responsible for the policy. Responses to interviews are subject to the same restrictions and conditions as specified for access to documents in Part II below. For example, if a question requires an answer that contains classified information, the auditor must have the appropriate clearance and any method of recording the information (notes, etc.) must be properly marked and safeguarded thereafter.

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<sup>1</sup> A research project is an announced effort to gain information on a particular topic or area for further audit work. Research projects offer DON personnel the opportunity to identify audit efforts that would be of particular interest or assistance to DON. Hereafter, references to audits shall include research projects.

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Identifying Personnel for Interview: When auditors seek to interview the person(s) in the organization "most knowledgeable of" or "responsible for" a matter within the scope of the audit, the Audit POC shall identify them. On occasion, the scope of an audit may require the auditors to interview other personnel, including those selected at random. For example, an audit may require the auditor to determine whether personnel understand office policy, practice or procedure regarding a matter. In such cases, the Audit POC shall ensure that someone provides the auditors the official office position on the matter. The Audit POC shall ensure that all personnel who may be interviewed understand the scope of the audit, their duty to participate in interviews or provide access to records (discussed below), and that no questions or requests to access records are "off the record." Where the amount of time or number of people requested for the interview appears excessive or unreasonable given the scope of the audit, the Audit POC shall explore other means of providing the necessary information.

## II. Access By Means of Record Review

General Rule: DoDIG and GAO auditors shall be granted expeditious and unrestricted access to all agency records<sup>2</sup> maintained by DON organizations that contain information falling within the scope of the audit being performed, subject to the conditions and restrictions discussed below. The auditors shall be permitted to make notes from the information in the records and to copy the records. Portions of reproduced records that do not fall within the scope of the audit should be redacted (excised) unless they would be released to the public under the Freedom of Information Act (FOIA) Request.

Release Authority: Within a DON organization, any person who is authorized access to an agency record may grant DoDIG or GAO auditors access to it. Such person shall follow procedures to ensure that after the audit is completed DON can document that the conditions and restrictions discussed below were satisfied and identify the records(s) accessed. The Audit POC shall

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<sup>2</sup> For DoDIG, an "agency record" includes a report, audit, review, document, paper, recommendation, or other material available to DoD which relate to programs and operations with respect to which the DoDIG has responsibilities under the Inspector General Act of 1978 (5 USC App, §6(a)(1)). For GAO, an "agency record" contains information about the duties, powers, activities, organization, and financial transactions of the DoD (31 USC §716(a)).

establish the procedures to follow for this purpose and maintain such documentation for a minimum of 6 months after completion of the audit. When more than one person within an organization has access to agency records that may be requested by an auditor, the Audit POC may designate the individual(s) responsible for providing access to specific records or types of records. Questions about the release of records shall be referred to the Audit POC for resolution at the local level or referral in accordance with the disputes resolution procedures set forth below.

Denial Authority: Only the Secretary of Defense (SECDEF) may deny DoDIG or GAO access to DON agency records. DoDIG is required to inform Congress when SECDEF denies it access to records, per 5 USC App, §8(b)(3). When SECDEF denies GAO access to records, the Comptroller General may bring a civil action against SECDEF in a United States District Court per 31 USC §716(b)(2). Therefore, no person may tell a DoDIG or GAO auditor that access to a requested record is denied until SECDEF makes that decision. Instead, state that the request has been referred for appropriate action and a decision is pending.

Access to Classified Information: Ordinarily, the scope of the audit and the audit task assigned an auditor establish that auditor's requisite "need to know" for the purpose of determining whether access to classified information should be granted. When classified information falls within the scope of an audit, an auditor whose audit task requires access to that information should be permitted access to it upon confirmation that the auditor holds the appropriate clearance level subject to the following conditions:

1. Copies of agency records provided to the auditor that contain classified information shall be appropriately marked, handled, transmitted and safeguarded as required for their classification. The auditor shall sign an itemized record of receipt listing each record.
2. Notes made by the auditor when examining classified information shall be reviewed by appropriate DON authority, marked with the appropriate classification, and handled, transmitted and safeguarded as required for that classification.

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However, SECDEF does have limited authority to deny access to certain information when in the interests of national security.<sup>3</sup> Therefore, the Audit POC promptly shall forward requests for information that falls within one of the following categories to the office or agency having primary interest in that information for review before release:

1. Compartmented information or other information requiring special access clearances;
2. Information classified TOP SECRET;
3. Information related to the conduct of military operations, war plans, force deployments or intelligence collections and analyses.

Should that office or agency request the information not be made available to the auditor because it appears that SECDEF would withhold it, the Audit POC shall notify the auditor of the concern and determine whether other information will satisfy the audit need or if some compromise is possible. If an agreement cannot be reached, the Audit POC shall follow the procedures for resolving disputes described below.

Access to Business-Sensitive Information: In general, auditors shall be given access to business-sensitive information that is within the scope of the audit upon signing a receipt listing the records to which access is granted (whether or not the auditor intends to take notes from or make copies of, the records). The receipt also shall state that the auditor will treat the information in the record as proprietary, business-sensitive information and will safeguard its release in accordance with 18 USC §1905 or such other law, rule or regulation as may apply. If the auditor takes notes from or makes copies of business-sensitive information, the nature of that information must be

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<sup>3</sup> Per 5 USC App, §8(b), SECDEF may prohibit DoDIG access to information concerning sensitive operational plans; intelligence matters; counterintelligence matters; ongoing criminal investigations by other administrative units of DoD related to national security; and other matters, the disclosure of which would constitute a serious threat to national security, if SECDEF determines it is necessary to preserve the national security interests of the United States.. Per 31 USC §716(d)(1)(A), the Comptroller General may not bring a civil action against SECDEF for failing to permit access to a record the President designates as related to foreign intelligence or counterintelligence activities.



clearly marked on the notes or copies, even if the originals are not marked. When the sensitivity of the information would be substantially reduced by the passage of a reasonable period of time, the Audit POC may request the auditor agree to delay the review of that information. Some business-sensitive information may fall under exemption b(5) of the FOIA, discussed below. Requests for access to business-sensitive information shall be reviewed on a case-by-case basis, and if not resolved at the local level, the Audit POC shall follow the procedures for resolving disputes described below.

Access to Draft, Preliminary or Privileged Information:

Ordinarily, DoDIG and GAO auditors shall be permitted access to agency records containing privileged or preliminary information, including drafts and "internal working papers," if that information falls within the scope of the audit. Records containing this type of information shall be conspicuously marked with language such as "DRAFT" or "WORKING PAPER" and may include language stating substantially that "this is a draft document subject to revision, and does not necessarily reflect the official position of the DON." Where appropriate, a cover sheet may be attached that cautions against certain uses of the information by the auditor because of its advisory, preliminary, or draft nature. DoDIG auditor access to records containing privileged or preliminary information may not be denied because the information in some manner reflects, describes, or is part of the "deliberative process" by which DON goes about making decisions. Thus, arguments that a record contains "advisory information" or "recommendations," describes "informal discussions," or in any other manner does not reflect an "official DON position" should not be raised with DoDIG. However, SECDEF does have some authority to withhold deliberative-process information from GAO. Specifically, SECDEF may withhold information covered by exemption 5 of the FOIA, 5 USC §552(b)(5),<sup>4</sup> which applies to the deliberative process privilege, the attorney-client privilege and the attorney work-

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<sup>4</sup> Per 31 USC §716(d)(1)(C), the Comptroller General may not bring suit against SECDEF for withholding a record exempt under (b)(5) or (b)(7) if the President or the Director of the Office of Management and Budget certify the record could be withheld under one of those exemptions and that "disclosure reasonably could be expected to impair substantially the operations of the Government."

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product privilege. Courts have also held that exemption b(5) includes a limited privilege for confidential government commercial data, and similar "business-sensitive" data created by the government. It is important to note that the standard for withholding (b)(5) material from GAO (quoted in footnote four) is not the same as that under FOIA and in most instances will be more difficult to meet. An Audit POC who is concerned that information requested by GAO is covered by FOIA exemption (b)(5) and might meet the standard for SECDEF to withhold it should consult with local legal authority before providing access to that information. If counsel believes the information should be withheld, the Audit POC shall notify the auditor of the concern and determine whether other information will satisfy the audit need or if some compromise is possible. If an agreement cannot be reached, the Audit POC shall follow the procedures for resolving disputes described below.

Access to Information Concerning Investigations and Audits: All requests for access to information concerning open or closed investigations or audits, investigative files, or audit working papers shall immediately be referred to NAVINSGEN, the Director of the Naval Criminal Investigative Service (NCIS) or the Auditor General (AUDGEN), as appropriate, for action.<sup>5</sup> NAVINSGEN, NCIS and AUDGEN shall grant access to information about investigations and audits, including reports, investigative files and workpapers unless they believe that SECDEF might withhold the information. In that case, they shall forward their concerns to the Deputy General Counsel of the Navy (DGCN) for consideration. However, before granting access to information concerning open investigations or audits, they shall inform the DGCN.

Access to Budget Information Before Transmission to Congress: Because GAO is an agent of Congress, budget materials, selected program acquisition data and outyear fiscal projections shall not be released to the GAO until after submission of the President's budget to the Congress for the year to which they pertain. Budget material includes all information in the submitted budget documents and budget justification books. An agency POC who is concerned that requested information has not been transmitted to

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<sup>5</sup> NAVINSGEN shall review requests concerning any administrative investigation; NCIS shall review requests concerning any criminal investigation; AUDGEN shall review requests concerning any audit. As noted earlier, SECDEF may withhold from GAO information exempt under 5 USC §552(b)(7), which applies to records compiled for law enforcement purposes. As a matter of policy, DON does not release records contained in investigative or audit files to either GAO or DoDIG until the investigation or audit is closed, absent exceptional circumstances.

Congress should ask the Assistant Secretary of the Navy, Financial Management and Comptroller (ASN (FM&C)), for a determination. If ASN (FM&C) advises the information has not been transmitted to Congress, the Audit POC shall notify the auditor of the concern and determine whether other information will satisfy the audit need or if some compromise is possible. If an agreement cannot be reached, the Audit POC shall follow the procedures for resolving disputes described below.

Access to Information Created by Other Agencies: In general, an auditor who requests information created or originated by other agencies should be referred to that agency. In some cases, requests for information generated by DON personnel for use by other agencies also should be referred to those agencies. Examples included, but are not limited to:

1. Requests for program decision memoranda and Future Years Defense Program (FYDP) information, which should be referred to OSD, Program Analysis and Evaluation (PA&E);
2. Requests for information concerning operational plans or support plans involving joint service participation, which should be referred to the Office of the Joint Chiefs of Staff, Washington, DC, for action per Joint Chiefs of Staff Instruction 5714.01, "Release Procedures for Joint Staff and Joint Papers and Information" (NOTAL).

Access to "Raw Data" for Manipulation: Traditionally, DoDIG and GAO auditors have requested access to information contained in existing records that appears in a stable (hard copy) format that can not be manipulated. However, with the advent of electronic data systems, auditors are more likely to request the information holder manipulate electronic data in order to produce reports that provide additional or different information the auditors believe may be useful to the audit. In some cases, the auditors may request direct access to the electronic data in order that they may manipulate the data themselves. Strictly speaking, data manipulated in such fashion is no longer an "agency record" which the auditor is entitled to access. Rather, data manipulation is more analogous to information obtained during an interview of an individual. Therefore, before manipulating data or developing special information, extracts, summaries, or analyses of data, the information holder should discuss with the Audit POC any concerns that the manipulation would produce inaccurate, distorted or misleading information, or that the amount of time required to produce the information in the requested format would be excessive. When appropriate, the Audit POC should notify the auditor of those concerns and determine whether other information will satisfy the audit need or if some compromise is possible.

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If an agreement cannot be reached, the Audit POC shall follow the procedures for resolving disputes described below. Under appropriate circumstances, an auditor may be provided a copy of data to manipulate, but access to original data that could be lost or damaged through improper manipulation shall not be allowed.

### III. Disputes Resolution

Disputes Resolution Procedures: If the Audit POC is unable to negotiate a compromise, the Audit POC should ask the auditor to provide a written request for the disputed information on DoDIG or GAO letterhead stationary. The Audit POC shall forward the request, with a memorandum stating the reasons why SECDEF should withhold the record, to NAVINSGEN via the chain of command. The memorandum shall include a legal analysis prepared by an attorney assigned to the Office of the General Counsel or the Judge Advocate Generals Corps. The memorandum, with any endorsements by the chain of command (which may include additional legal analyses), shall be provided to NAVINSGEN not more than 10 working days from the date of the written DoDIG or GAO request. NAVINSGEN may conduct an audit resolution meeting. If the parties can not reach agreement, NAVINSGEN shall consult with the DGCN. If NAVINSGEN and the DGCN agree the information shall be released, NAVINSGEN shall release it or direct its release. If they do not agree, NAVINSGEN will forward the matter to SECNAV for action.